THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 8653 of 1997

DATE: 28-02-2007

Between :

Gyara Joseph

… Petitioner

And

The Additional Revenue Divisional Officer,
Bhongir, Nalgonda District and 12 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 8653 of 1997

ORDER:

This writ petition is filed challenging the proceedings of the first respondent-Additional Revenue Divisional Officer, Bhoangir, dated 05-09-1995.

In the affidavit filed in support of the writ petition, it is stated that the petitioner is the son of one Abba Sailu who was a protected tenant in respect of the land situated in Sy.Nos.385, 353, 358,381, 383,352,361, 366, 365,364 of Alair village of Nalgonda District. He was also issued a protected tenant certificate and was subsequently granted certificate of ownership under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Act'), on 30-04-1977.

After the death of Abba Sailu, the petitioner along with his brother continued in possession and enjoyment of the said land by succession. While so, the second respondent-Joint Collector, Nalgonda passed an order dated 14-02-1990 declaring that the predecessors in title of the respondents 4 to 9 herein by name Shalbanapuram Ramaiah, Rosaiah and others, are having a share in the land in respect of which ownership certificate was granted in favour of the petitioners' father. Pursuant to the said proceedings, the third respondent-Mandal Revenue Officer, Alair, was directed to take further steps. Though the petitioner approached the third respondent and raised an objection stating that the ownership certificate granted in favour of his father under Section 38-E of the Act has become final and therefore, the second respondent ought not to have passed the proceedings dated 14-02-1990 without any notice to him and without

conducting any enquiry, the said objections were not considered. On the other hand, the first respondent-Additional Revenue Divisional Officer issued Form-II certificate dated 05-09-1995 declaring that the respondents 4 to13 herein are also owners of the land in question along with the father of the petitioner.

Hence, this writ petition seeking a direction to set aside the order dated 05-09-1995 passed by the first respondent and to declare the respondents 4 to 13 have no right over the lands in Sy.Nos.385,353,358,381,383, 352, 361, 365, 354 of Alair village.

I have heard the learned counsel for both the parties and perused the material on record.

Learned counsel for the petitioner vehemently contended that the first respondent does not have any power to review the certificate issued in favour of the petitioner's father in the year 1977 that too without giving any notice to the petitioner. Despite notice, none entered appearance for the respondents 4 to 8, 10, 12 and 13. Though respondents 9 and 11 entered appearance, no counter affidavit is filed contradicting the allegations made by the petitioner.

In the counter affidavit filed on behalf of the official respondents 1 to 3, the fact that the petitioner's father-Abba Sailu was the protected tenant and a certificate to that affect was issued to him has not been disputed. However, it is stated that aggrieved by the said certificate, the landlord by name Smt. Sharifunnisa Begum, preferred an appeal and the same was allowed remanding the matter to the first respondent-Additional Revenue Divisional Officer, Alair for fresh consideration. Pursuant thereto, the first respondent-Additional Revenue Divisional Officer after reviewing the entire proceedings passed the impugned order dated
05-09-1995. Against the said order since an appeal is available under Section 90 of the Act, the present writ petition is not maintainable without exhausting the said alternative remedy.

Even from the above counter affidavit, it does not appear that the petitioner was given any notice before passing the order dated 14-02-1990 on the file of the Joint Collector, Nalgonda. Since the fact that the petitioner's father was a protected tenant and a PT Certificate was

issued is not in dispute, the second respondent ought not to have passed the order dated 14-02-1990 adversely affecting the rights of the petitioner without notice to him. The impugned certificate dated 05-09-1995 was issued by the first respondent obviously on the basis of the order of the second respondent dated 14-02-1990. Consequently, the said certificate dated 05-09-1995 is also liable to be set aside.

Accordingly, the proceedings of the second respondent dated 14-02-1990 as well as Form II certificate issued by the second respondent dated 05-09-1995 are hereby set aside and the writ petition is disposed of with a direction to the second respondent to consider the matter afresh after due notice to the petitioner as well as all other persons concerned and pass appropriate orders in accordance with law. Till such time, *status quo* obtaining as on today as to the nature and possession of the land in question shall be maintained. No costs.

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G. ROHINI, J.

Dt. 28-02-2007

KLP